IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.41/2001

1. Rajkumar Mukerji,
presently locked up in
Central Jail, Aguada, Goa.

2. Laxman Nair,
presently locked up in
Judicial lockup, Sada, Vasco. .... Appellants/
Accused.

V/s.

State of Goa. .... Respondents.

Mr. S.N. Joshi, Advocate under Legal Aid Scheme for the appellants/accused.

Mrs. W. Coutinho, Addl. Public Prosecutor for the State/ Respondents.

CORAM : D.G. DESHPANDE &
P.V. HARDAS, JJ.

DATE : FEBRUARY 3, 2003.

ORAL JUDGEMENT : (Per HARDAS, J.)

The appellants who are convicted by the learned District and Sessions Court, North Goa, at Panaji, in Sessions Case No.42/98, by Judgment dated 17.3.2001, sentenced to suffer Imprisonment for Life under Section 302 of the Indian Penal Code and to pay fine of Rs.10,000/- each and also sentenced to undergo Rigourous Imprisonment for 10 years and to pay fine of Rs.5,000/- each for the offence under Section 394 of the Indian Penal Code, have preferred the present appeal

challenging their conviction and sentence.

2. The facts, necessary for the decision of the appeal, are set out hereunder :

PW.29, P.I. Deu Banaulikar was attached to the Panaji Police Station in the year 1998. PW.1 Luis Tavora, filed a complaint on 18.9.1998 at 8.50 hours. The said complaint is at Exhibit-8. PW.29, accordingly registered the offence vide Crime No.195/98 and visited the scene of offence along with his staff. The scene of offence is a flat on the second floor, Trionora Apartments, Panaji. PW.29 had also sent a letter requesting services of a photographer and finger print expert and an engineer to draw sketch of the scene of offence. The scene of offence panchanama at Exhibit-27 was drawn in the presence of PW.14 Sebastiao Quadros. Exhibit 28 is the rough sketch of the scene of offence. The inquest panchanama at Exhibit-29 came to be drawn. At the scene of offence, one uniform worn by hotel employee was found. The said uniform had badge "21". Register of the hotel was called and perused and it was found that uniform bearing badge "21" was given to accused No.2 Laxman. The papers regarding supply of the uniform are at Exhibit-19. The said papers had been handed over to PW.29, PI Banaulikar along with covering

letter, which is marked Exhibit PW.29/A. From the scene of offence, an apparatus for repelling mosquitos (MO.11), a pair of rubber chapples of the deceased (MO.2), chilli powder spread on the floor (MO.1), news paper 'Navhind Times' dated 18.9.98 (MO.4), 5 cigarette butts (MO.8), the uniform (MO.6), bedsheet (MO.3), one cap of beer bottle, bearing name 'Kingfisher' (MO.14), bunch of keys (MO.12), chilli powder from the table (MO.15), a brown coloured envelope with 15 coupons of RBI., and a paper slip showing an amount of Rs.11,105/- (MO.16), one almost empty beer bottle, (MO.13) and loose coins (MO.5) were attached. Photographs of the scene of offence are at Exhibit-10. Finger prints from the beer bottle and the mosquito repellant, were taken. The dead body was sent for post mortem examination. The accused came to be arrested by A.S.I. Patil from a room of a prostitute at Baina. The accused were wearing some of the stolen gold ornaments. The articles from the possession of the accused were seized vide Exhibit-31. Sealing material was called from the Vasco Police Station vide Exhibit PW.29/B. By Exhibit PW.29/C, the seal was returned. On search of accused No.1, currency notes of Rs.10,800/- (MO.20) were found. Two notes of Rs.10/- (MO.21), a coin of 50 paise (MO.22), a ball pain (MO.23), a pair of sun glasses (MO.24), were seized. The accused was also found possessing cigarette (MO.26).

From the left pocket, two keys (MO.27) were also found. The gold metal chain worn by him (MO.28) was also seized and another chain (MO.29), a finger ring MO.30), a silver coloured metal ring (MO.31), wrist watch (MO.32) were seized. Accused No.1 had adhesive tapes wrapped on the right ring finger suggesting that he had injuries. Thereafter, accused No.2 was searched and from top shirt pocket, a green coloured money purse (MO.34) was found. On opening the purse, a visiting card and a 100 rupee note, one 50 rupee note, two coins of Rs.2/-, one coin of rupee 1/-, four coins of 50 paise, one coin of 25 paise, one coin of 20 paise and 4 coins of 10 paise (MO.34), were found. From the left front pant pocket, a cotton pouch (MO.35), was found. The pouch contained two bangles of yellow coloured metal (MO.36), along with golden coloured flowers, necklace with white and golden coloured beads (MO.37), one bangle with white beads with gold colour border (MO.38), 13 bangles of yellow coloured metal with silverish design (MO.39), a Titan Quartz Classic wrist watch (MO.41), one earring with white beads, with 3 beads hanging (MO.42), two one rupee coins (MO.43), one coin of 50 paise, one coin of 20 paise and one coin of 10 paise (MO.43), 22 yellow coloured metallic sovereigns in the shape of a bust (MO.45), were found. The accused No.2 also removed a broken bangle with elephant heads on either side from

his right pant pocket (MO.46). He removed yellow coloured metal chain worn round his neck (MO.47). Accused No.2 was also having an injury to his right middle finger. Both the accused were then brought to the police station and placed under arrest. Their clothes were attached vide Exhibit-38. The clothes of accused No.1 are cream coloured pant (MO.50),and full sleeves shirt (MO.51). The clothes of accused No.2 are grey coloured pant (MO.52) and long sleeves shirt (MO.53). On the next day, PW.29 PI Banaulikar seized a pair of rubber chapples on the stair case, leading to the flat of the deceased.

On 20.9.98, accused No.2 was interrogated and he volunteered to show a ring given by him to Sultan Lodge at Vasco da Gama. The said discovery memorandum of the accused is at Exhibit PW.20/A. This discovery memorandum was made in presence of PW.20 Vinod Nambiar. As per the information given by the accused, the police and the panchas proceeded to Sultan Lodge and attached the gold ring. The panchanama to that effect is at Exhibit PW.20/B. Certain articles which were on the dead body were sent by Exhibit PW.29/D to the Chemical Analyser. The report is at Exhibit PW.29/E. During interrogation, accused No.1 had stated that he had been admitted for one day in the Goa Medical College. From

the room occupied by accused No.2, a bag was examined and in his bag, a discharge card was found. After completing the investigation, a charge-sheet against the accused came to be filed.

3. On committal of the case, learned District and Sessions Judge, vide Exhibit-4, framed charges against the accused for an offence punishable under Section 302 of the Indian Penal Code, read with Section 34 and for an offence punishable under Section 394, read with Section 34 of the Indian Penal Code. Both the accused pleaded not guilty and claimed to be tried. During the trial, accused No.1 changed his plea and pleaded guilty. Learned Sessions Judge, recorded his plea at Exhibit-35, which is a confession of accused accused No.1. Learned Sessions Judge, however, rejected the said plea of guilt of the accused considering the seriousness of the offences with which he was charged and proceeded with the trial.

4. The prosecution, in order to support its case, examined 33 witnesses. The case against the accused consisted of circumstantial evidence and the learned trial Court has found the following circumstances proved against the accused :

(I) finding of the chilli powder at the scene of offence and finding particles of chilli powder on the clothes of the accused;

(II) recovery of the stolen property from the person of the accused;

(III) recovery of golden ring at the instance of accused No.2;

(IV) both the accused seen together, hiring motor cycle and going to Margao;

(V) accused were not found on the night of 17.9.1998 in the restaurant, nor did they report for duties on the next day;

(VI) recovery of uniform from the scene of offence;

(VII) recovery of the chappal of the accused from the stair-case;

(VIII) finger prints of the accused found on the beer bottle;

(IX) admission of injuries by accused No.1 before the Medical Officer;

(X) blood stains on pant Exhibit-16; and

(XI) nail clippings showing presence of blood stains;

5. In support of the first circumstance, the prosecution has examined PW.1 Luis Tavora, PW.3 Carlos Tavora, PW.4 Mosses Fernandes, PW.7 Ragavandra Venkatraman, PW.8 Shekhar Surliker, PW.26 Alwyn Fernandes and PW.28 Anand Naik.

6. The evidence of Pw.1 is that the deceased Dr. Tithi Tavora was married to his brother. She was a Gynaecologist. She was residing in a flat at 'Trionara

Apartments'. She had a daughter aged about 9 years and a son aged about 6 years. PW.1 Luis Tavora was residing on the First Floor of the building, while the deceased along with her husband was residing on the Second Floor of the same building. On 18.9.1998, when PW.1 Luis Tavora was in his flat, the children of the deceased came to his flat, crying and told him that something was wrong with their mother, as their mother was lying on the floor, all bandaged and they were trying to wake her up, but she was not responding. The sister of PW.1 named Margarida came there and PW.1 informed her what the children had told him. PW.1 Luis Tavora, therefore, went to the second floor to see what had happened and found that his sister-in-law, deceased Tithi Tavora lying on the floor, gagged at the mouth and bandaged. He also noticed that the hands and legs were also tied by bandage. The legs were also tied with electric cord. PW.1 tried to wake up the deceased, but she did not respond. PW.1, therefore, returned to the flat and informed his sister Margarida what had happened and he informed his elder brother staying at Altinho. Before going to the police station, PW.1 went to the restaurant by name 'Navtara' situated on the ground floor of the said building and run by PW.3 Carlos Tavora, who is the husband of the deceased. He asked the Kitchen Manager to find out who was the last person who had gone to see

the deceased. He also told the Kitchen Manager to find out whether any of the employees working at the restaurant were missing. PW.1 then went to the Police Station and lodged his complaint at Exhibit-8. He also refers to the scene of offence panchanama and the other steps in the investigation taken by PW.29, PI Banaulikar.

In cross examination he has admitted that his complaint was against unknown culprits. He has also admitted that the main door of the flat was wide open. He admitted that he had not stated in the complaint regarding his meeting the kitchen manager. He denied that both the accused were not amongst the said four missing employees. He also denied that the bags produced by kitchen manager before the police were not belonging to the accused. Similarly, he also denied the suggestion that the uniform found in the flat of the deceased did not belong to any of the accused. He also denied the suggestion that accused No.2 had not approached the deceased for treatment at night time and that the deceased had advised accused No.2 to go to the Goa Medical College. He also denied the suggestion that accused No.2 did not go to the Goa Medical College in a rickshaw accompanied by accused No.1. The evidence of Pw.1 is amply corroborated by F.I.R. at Exhibit-8.

7. PW.3 Carlos Tavora is the husband of the deceased. He has stated that he had left the house on 17.9.1998 at 6.10 a.m. for going to Belgaum. He had gone to Belgaum accompanied by his friend Kadar. On the next day at about 10.00 a.m. his friend Kadar received a phone call from his elder brother, asking them to rush back home. When PW.3 reached home at 2.00 p.m. he was informed about the murder of his wife Dr. Tithi Tavora. An amount of about 11,000 rupees was missing from the house. The gold ornaments which were normally kept in the house were also found missing. He has stated that his wife used to wear diamond studded gold ring along with wedding gold band. According to him, the deceased customarily used to wear a gold chain around her neck and also used to wear a gold bangle, having elephant heads on either ends. He found that a pearl chain and pearl earrings were also missing along with his wrist watch. He has further stated that the employees in the restaurant were required to wear uniform and the uniforms had numbers. Accused No.2 was given uniform with number "21". He does not recollect the number of uniform of accused No.1. He states that accused no.2 was at the kitchen door of the restaurant and had seen him while entering the car with a bag in his hand while going to Belgaum. He has further stated that as a rule for the last 10 years, if any of his staff members fell

sick, they were required to report his wife first at any time of the day or night. He has admitted that accused No.2 Laxman was patient of his wife and had visited his wife on 15th at about 10.00 p.m. accompanied by another employee whose name he came to know as Raju, accused No.1. He has stated that his wife would not open the door unless the person was known. PW.3 identified his wife's wrist watch. Similarly, he identified the bangle. He also identified pearl earrings belonging to his wife. He also identified the pearl bangle. He has identified the Titan wrist watch (MO.41), chain (MO.37), clothes of the accused and the bangle with the elephant heads (MO.46), bangles (MO.43) and 22 yellow colour metallic silver sovereign as belonging to his children. A gold chain with oval and round disc (MO.28) and gold chain (MO.44), a plastic chain with 2 pendants and a cross. He identified the nightie dress which was worn by his wife and the gown also worn by his wife. He identified the mosquito repellant apparatus. He has stated that he had Kingfisher beer bottle in his fridge. He has also identified the register of attendance of the employees. He has stated that he did not normally store chilli powder in the house. He stated that he did not keep chilli owder in the house on the dining table. He has admitted that MO.36, two bangles of yellow colour metal as belonging to his daughters which were part of

attire for Indian Classical Music. He has identified MO.12 as the keys belonging to him. He had identified sun glasses (MO.24).

In cross examination, he has stated that for the last about 4 years he might have remained away from home on 3 or 4 occasions. He has also admitted that normally apart from his wife and children, no one was staying in his flat. He has further admitted that at the time of the incident, he did not have maid servant. He has further admitted that cash collection from the restaurant is always sent in the night time. He has admitted that he might not have documentary evidence to show that the articles belonged to his wife. He has stated that in the restaurant about 50 to 60 employees used to work. He has further admitted in the cross examination that after the murder, he was told that accused Raju had shown aggressive and violent tendencies. He admitted that he had not mentioned in his statement before the police that his wife used to wear diamond ring. The explanation given by him is that he might have not been asked by the police about the ornaments. He also admitted that he might have not mentioned to the police that he had seen Laxman near kitchen door before his departure. He admitted that he had not stated to the police that accused No.2 Laxman

was accompanied by another employee when he had visited his wife on 15th. He denied the suggestion that both the accused were not missing from the restaurant, but were off duty. Similarly, he also denied the suggestion that uniform with badge No."21" was not given to accused No.2.

8. PW.4 Moses Fernandes who, at the relevant time, was working as Manager/Captain of Hotel Navtara, states that his duty hours were from 11 a.m. to 3 p.m. and from 5 p.m. to 11 p.m.. He further states that on 17.9.1998 he reported at the restaurant at about 5 p.m. One Mr. Martin, the Cashier, called him and told him to collect the cash for handing it over to the owner who was residing on the second floor. Accordingly, said Mr. Martin handed over him cash in an envelope. PW.4 proceeded to the residence on the second floor at 9.40 p.m. He had taken two Bisleri bottles to be given to the deceased. He rang the call bell at about 9.40 p.m. and the door was opened by the deceased and he handed over the said envelope containing the cash and the two Bisleri bottles. In the cross examination he has admitted that he did not see who was the person in the kitchen. Some staff were present when the envelope was handed over to him, but he did not notice who they were. Because they have not reported for duty, he had stated

that they were missing. He denied the suggestion that he had not handed over the cash and the two Bisleri bottles.

9. PW.5 Bhupatsingh Rana, who is an employee of the hotel, is a panch witness to the seizure of the chilli powder from the kitchen of the hotel. The sample of the chilli powder was attached under the panchanama Exhibit-14. In the cross examination, he has denied that he was not present when the chilli powder was attached. Similarly, he has also denied the suggestion that the panchanama was drawn at the police station and he had signed the same at the police station.

10. PW.6 Gopal Shetty is a witness to the seizure of the chappal of accused No.2, which was found on the stair case of the said building. The said chappal was seized by panchanama Exhibit-16 and the said chappal is MO.48. He has denied the suggestion that he was not present when the said chappal was seized.

11. PW.7 Raghavandra Venkatraman who was working at the relevant time as dish-washer in Navtara restaurant. He states that on 17th September, he had seen accused Laxman till 8 p.m. and thereafter, he did not see him. He denied the suggestion that he did not

see accused Laxman at 8 p.m. on that day.

12. PW.8 Shekhar Surlikeri who is working as a cook in the hotel states that on that day he returned to the restaurant at 11 p.m. and noticed that utensils had piled up unwashed and he did not see accused Laxman at that time. He further states that accused No.1 Raju asked him for the key of the room, meant for changing clothes. Thereafter, accused Raju went to the changing room and came with a jacket and he went away. Both the accused usually used to sleep in the hotel, but on that night both accused did not sleep in the hotel. On the next day, both the accused did not come for work. He further states that in the event any of the employees fell sick, they were being treated by the deceased.

13. PW.9 Natrajan Baluchandra, an employee in the hotel, is a panch to the seizure of the record maintained by the hotel regarding the distribution of uniform to the employees. He identified the two registers MO.17 and MO.18 and three loose papers MO.19. The same were attached vide Exhibit-20.

14. PW.12 Raj Shenoy is an acquaintance of accused Raju, who had informed the police that Raju could be found with the prostitute by name Mavani at

Baina. Accordingly, he had gone with the police at their request to Baina and both the accused were found present in the company of the prostitute. According to him, the police had taken search and the gold ornaments and cash in possession of the accused was seized. Similarly, search of accused No.2 was also taken and certain gold articles and cash was seized.

15. PW.13 Sayeed Muzawar states that he knows both the accused and accused No.2 had come for treatment to the deceased. He has also identified the papers regarding distribution of uniform. He states that accused No.1 Raju was given uniform No.6 and accused No.2 Laxman was given uniform No.21. He states that accused Laxman had collected uniform on 17th September. He has also identified earrings, gold chain, finger ring and gold bangles worn by the deceased. In cross examination, he has denied that the record regarding distribution of uniforms has been manufactured by him at the instance of the police. Similarly, he has denied the suggestion that the accused Laxman had not come to take treatment at any time from the deceased.

16. PW.14 Sebastiao Quadros is panch on the the scene of offence panchanama and the sketch of the flat at Exhibit-28. He also stated that inquest

panchanama at Exhibit 29 was drawn in his presence. PW.15 Rajesh Zuarkar corroborates the version of the arrest of the accused in the room of the prostitute and the seizure of the golden ornaments and cash from the possession of the accused. The arrest panchanama of the accused is at Exhibit-31.

17. PW.16 Ramesh Kolkar, at the relevant time was working as Manger of Sultan Lodge in Vasco. He states that he knows both the accused. He states that on 18th September, while he was at the counter of the lodge, accused Laxman had come at about 3.30 p.m. and had given a gold ring. Accused Laxman had asked him to keep the said ring and he would collect it later on. He further states that accused Laxman had occupied one of the rooms in the lodge. He has identified the signature of accused Laxman on the register Exhibit-33, of which a xerox copy is at Exhibit-34. He states that on the next day, he had handed over the said ring to the police and he has identified the said ring as MO.54. In cross examination he has denied the suggestion that accused Laxman did not stay in the room in his lodge. He states that the police had put the ring in an envelope and had seized it, but he does not recollect whether his signature was taken by the police. He has denied the suggest that he had not handed over the ring to the

police.

18. PW.17 Pradeep Raune states that he is a motor cycle pilot and he had taken both the accused on his motor cycle to Margao. On reaching near hospital, the accused had told him to take them to the Railway Station at Margao. The accused had paid him Rs.300/- as his charges. He has identified the clothes worn by the accused. In cross examination, certain omissions are brought on record regarding the accused telling him to take them to the hospital and thereafter to the Railway Station. He has admitted that he has not issued receipt for payment of Rs.300/-. He has denied the suggestion that he had not taken both the accused on his motor cycle.

19. PW.18 Shaikh Ramzan is a panch on the seizure of clothes of the accused which were attached vide Exhibit-38. PW.19 Jagannath Kurbar who, at the relevant time, was working as waiter in Real Bar, states that accused No.1 had come to his bar and had asked him to call a friend by name 'Ramesh' staying in Sultan Lodge. He states that he had gone to Room No.103 and informed accused No.2 that he was called by his friend. He also speaks about arrest of the accused in the room of the prostitute Bhavani. PW.20 Vinod Nambiar is a

panch witness on the disclosure statement made by accused No.2 at Exhibit PW.20/A regarding the gold ring which was seized from the employee of Sultan Lodge. The seizure memo is at Exhibit PW.20/B.

20. PW.21 Manohar Joshi is the Scientific Assistant, working in Crime Branch, C.I.D. Panaji. He states that he found two finger prints on the Kingfisher beer bottle and had detected one finger print on the mosquito repellant. His report is at Exhibit PW.21/A. He further states that on 28.9.1998, he had received finger impression slip of the accused and of the deceased, which were sent along with the covering letter Exhibit PW.21/B. He further states that he had sent the empty Kingfisher beer bottle, mosquito repellant and the finger impression received from the police, to the finger print expert by his covering letter, which is at Exhibit PW.1/C. He has stated that inadvertently, the mosquito repellant was not sent and therefore, it was sent by covering letter Exhibit PW.21/D. The report of the Director of the Finger Print Bureau is at Exhibit PW.21/E. The Director has opined that the finger prints on the empty bottle matched with the finger prints of accused No.1 Raju. In respect of the finger impression on the mosquito repellant, the Director had opined that no readable prints were noticed.

21. PW.22 Narendra Naik, is a draughtsman who had drawn the plan at Exhibit PW.22/B in respect of the flat of the deceased. PW. 23 Kumba Shakila who runs a prostitute den, states about the visit of the accused and also arrest of the accused in the room of Bhavani. PW.24 Dr. J.D. Lawande has identified the blood group of accused No.1 as "B" Rh Positive and certificate in this regard is at Exhibit PW.24/A. The blood group of accused No.2 has been identified as "AB" Rh Positive and the certificate is at Exhibit PW.24/B. PW.25 Bhiva Mopkar who, at the relevant time, was working as a room boy in Hotel Sultan at Vasco, states that he knows accused No.2 who had registered in Sultan Hotel as 'Deepak' and was allotted room No.103.

22. PW.27 Dr. Silvano Dias Sapeco who had performed the post mortem on the deceased and he had noticed the following injuries :

(1) Bruise reddish in colour 4 x 3 cms. on posterior parietal region of scalp;

(2) Bruise, reddish in colour 4 x 3 cms. on right temporal region of scalp;

(3) Bruise, reddish in colour 4 x 3 cms. on left temporal region of scalp;

(4) Abrasion with red bruise 1 x 0.5 x 0.5 cms. on left upper aspect of upper lip;

(5) Abrasion with red bruise 1 1/2 x 1/2 x 1/2 cms.on left lower aspect of lower lip;

(6) Semilunar abrasions area 1 1/2 cms. x semilunar on left side of mid chin;

(7) Semilunar abrasions 1 1/2 cms x semilunar on left side of lower chin;

(8) Semilunar abrasions 1 1/2 cms. x semilunar on right bridge of nose;

(9) Semilunar abrasions 1 1/2 cms. x semilunar on right maxilla;

(10) Semilunar abrasion 1 1/2 cms x semilunar on right cheek 2 cms. besides ala

(11) Abrasion with red bruise 1 x 1/2 x 1/2 cms. on right upper aspect of upper lip;

(12) Abrasion with red bruise 1 x 1/2 x 1/2 cms. on right lower aspect of lower lip;

(13) Semilunar abrasion 1 1/3 cms. x semilunar on right side of chin;

(14) Semilunar abrasion 1 1/3 cms. x semilunar on right angle of chin;

(15) Semilunar abrasion 1 1/3 cms. x semilunar on right chest front 2 cms. below mid collar bone;

(16) Semi lunar abrasion 1 1/3 cms. x semilunar on right upper chest front;

(17) Abrasion 2 x 2 cms. at back of nape of neck 2 cms. above hairline crease;

(18) Wedding ring band paleness with absence of ring and an abrasion of 3/4 x 1/2 cms. was seen on dorsum of left middle finger;

(19) Bruise, reddish in colour, 4 x 3 x 2 cms. on left inner aspect of upper arm.

(20) Bruise, reddish in colour 4 x 3 x 2 cms. on right outer aspect of foot;

(21) Bruise reddish in colour 4 x 3 x 2 cms. on left outer aspect of foot;

(22) On removal of the crepe bandage ligature material around neck and face, there was a 2 cms. band of paleness placed transversally

around neck just at level of thyroid cartilage, encircling all around neck for 34 cms. and a portion of it was on face which had also made a band of 1.5 cms. on either cheek extending from angle of mouth to the right knot aspect and the left chin angle region;

(23) On removal of the crepe bandage ligature material around left wrist there was a 1 1/2 cms. band of paleness of 15 1/2 cms. circumference;

(24) On removal of the crepe bandage ligature material around right wrist there was a 1 1/2 cms. band of paleness of 15 1/2 cms. circumference;

(25) On removal of the cable wire ligature material around right lower leg, 18 cms. above right heel there were two circling bands of 20 x 0.5 cms.

(26) On removal of the cable wire ligature material around left lower leg, 16 cms. above left heel, there was a single circling band of 20.5 cms.

PW.27 has opined that the death was due to strangulation with crepe bandage as the ligature material around neck and mouth associated with smother which were necessarily fatal and fresh at the time of death. His report is at Exhibit PW.27/A. He further states that on 19.9.1998 he had examined accused Raju and the accused had a lacerated punctured wound on the fourth finger of the right hand of 0.5 x 0.5 x 0.5 cms. along mid medial aspect at crease of middle phalanx. He had also noticed lacerated punctured wound of 0.3 x 0.3 x 0.3 cms. along mid outer medial aspect of right mid base of fourth finger. He has opined that both the injuries could be caused by human teeth bite marks and were of within 36

to 48 hours at the time of examination. According to PW.27, the said injuries were consistent with the alleged history of smothering the victim, and the said history was given by accused Raju himself. He had also examined accused No.2 Laxman and noticed two lacerated punctured wounds of 1 x 0.5 0.5 cms. along front and distant phalang at outer aspect and another at base of distant phalang at outer aspect. He has opined that both these injuries could be caused by human bite marks. He has further stated that the injuries were consistent with the history of smothering given by the accused. The injury certificate of the accused is at Exhibit PW.27/C. In cross examination he has stated that the death was caused due to cumulative effect of smothering and strangulation by crepe bandage. He has denied the suggestion that the death could be due to incidental strangulation. He has also denied the suggestion that the injuries on the person of the accused were not those of teeth marks. He has also denied the suggestion that the ligature marks might have been received by the deceased after death. He has also denied the suggestion that the injuries could be caused by a fall. Similarly, he has denied the suggestion that the accused did not give him any history regarding cause of the said injuries.

23. Mr. Joshi, the learned Counsel appearing on behalf of the appellants/accused has urged before us that in the present appeal, the evidence against the accused consists of only circumstantial evidence and according to him, the prosecution is enjoined with the burden of proving each and every circumstance. According to him, the prosecution has failed to discharge the burden and the circumstances which are proved, do not unerringly point to the guilt of the accused by excluding the hypothesis of innocence of the accused.

24. We have given our anxious consideration to the submissions advanced by the learned Counsel appearing for the appellant. We have also adverted to the evidence, in detail. According to us, the prosecution has been able to establish that accused Nos.1 and 2 were not found in the hotel where they were working on the night of 17/9/1998, nor had they reported for duty on the next day. According to us, the prosecution has been able to establish that on their arrest, stolen property was found in their possession and a ring came to be recovered at the instance of accused No.2. According to us, the uniform of accused No.2 was found at the scene of offence and traces of chilli powder were found on the clothes of accused Nos.1

and 2. The most clinching circumstance is finding of the finger prints of accused No.2 on the empty bottle, found at the scene of offence. The accused have also admitted the guilt before the Medical Officer, PW.27 Dr. Sapeco who had examined them.

25. PW.3 Carlos Tavora, the husband of the deceased, has identified various stolen articles belonging to the deceased from the possession of accused Nos. 1 and 2. Both the accused were arrested on the next day of the incident. The recovery of the stolen articles is soon after the commission of the offence. The accused have not been able to satisfactorily account for the possession of the aforesaid articles. According to us, therefore, the prosecution has been able to forge a chain of circumstantial evidence which is so complete that it excludes every hypothesis of innocence of the accused and unerringly points to the guilt of the accused. Therefore, according to us, the learned trial Court which has arrived at the finding of the guilt of the accused after appreciating the evidence, has not committed any perversity in the reasonings. The appeal is thus devoid of any substance and deserves to be dismissed.

26. Criminal Appeal No. 41/2001 is dismissed.

The conviction and sentence, as passed by the learned Addl. Sessions Judge, Panaji by his Judgment and Order dated 17/3/2001, in Sessions Case No. 42/98 is, hereby, confirmed.

D.G. DESHPANDE, J.

P.V. HARDAS, J.

ssm.